Beaird Industries, Inc. *and* International Union, United Automobile, Aerospace and Agricultural Implement Workers of America and its Local 2297 (UAW), AFL–CIO. Case 15–CA–11923

February 28, 1994

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND TRUESDALE

On September 21, 1993, Administrative Law Judge Richard J. Linton issued the attached decision. The Charging Party and the General Counsel filed exceptions and supporting briefs. The Respondent filed an answering brief, and the Charging Party filed a reply brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] and to adopt the recommended Order.

ORDER

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

[1] The General Counsel and Charging Party have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] In its exceptions, the Charging Party contends, inter alia, that the unfair labor practice strikers had a statutory right to reinstatement commencing on April 6, 1992, and that the Charging Party did not and could not waive that right. We do not agree with the Charging Party that this case involves the question of waiver of a statutory right.

The strikers had a statutory right to reinstatement only on their unconditional offer to return to work. The decision as to when to make the effective date of the offer to return was well within the broad authority a collective-bargaining agent possesses to act on behalf of employees in a strike situation. See *Woodlawn Hospital*, 274 NLRB 796 (1985). We agree with the judge that it was reasonable for the Respondent to interpret the Union's offer as commencing on April 13, 1992. Inasmuch as the Respondent reinstated all the strikers within 4 days of the April 13 date specified by the Charging Party, the judge correctly concluded that the Respondent did not unduly delay the return of the strikers.

Michael W. Jeannette, Esq., for the General Counsel.
S. Mark Klyza, Esq., Robert J. David Jr., Esq., and, only on brief, *Henry T. Arrington, Esq. (Kullman, Inman, Bee, Downing & Banta)*, of New Orleans, Louisiana, for the Respondent.
Samuel Morris, Esq., and, only on brief, *Florence M. Johnson, Esq. (Agee, Allen, Godwin, Morris & Laurenzi)*, of Memphis, Tennessee, for the Charging Party.

DECISION

STATEMENT OF THE CASE

RICHARD J. LINTON, Administrative Law Judge. The general question here is whether Beaird Industries (BI) unduly delayed reinstating 153 unfair labor practice strikers and, if so, the date backpay liability attaches. Finding the answer to be no, I dismiss the complaint.

In the 1967 motion picture *Cool Hand Luke*, Strother Martin delivers a line which best describes the source of the problem in this case: ''What we have here is a failure to communicate.''

(Martin, as the prison camp warden, addressing Paul Newman and other chain-gang members on the consequences about to befall Newman for ignoring the rule against escape attempts.)

As the parties were about to resume a related unfair labor practice trial on Monday, April 6, 1992, the Union's representative, James D. Baker, delivered to BI (the Company) a letter unconditionally offering the immediate return of the strikers to work. A discussion ensued about time, with BI's attorney stating that a continuance from that trial would be necessary. A moment later Union Representative Baker said, ''I will make a commitment to the company right now that the clock will not start running until the 13th.'' BI interpreted the Union's commitment to mean that the Board's 5-day administrative grace period for orderly reinstatement (during which no backpay accrues) would not start until the following Monday, April 13. (An interpretation I find to be reasonable.) Although called as a witness before me, Baker never explains what he meant by his commitment to BI.

The Government's apparent position here is that the Union's commitment meant nothing, and that the 5 days began counting on April 7, the day after delivery of the unconditional offer to return to work. Thus, backpay would begin on Monday, April 13. By implication, therefore, the General Counsel's position is that if Baker's commitment to BI meant anything at all, it meant that the backpay clock—not the 5-day clock—would start on Monday, April 13. That interpretation would render the Union's commitment meaningless, for even without the Union's commitment backpay would not have begun here until Monday, April 13. Had BI understood that to be the Union's position, BI may well have pushed hard on the record for a continuance of the case then at trial so that it could begin the reinstatement process. As it is, BI reinstated everyone by Thursday, April 16. Because BI's interpretation was reasonable (April 13 meant the 5-day clock), and the reinstatement of the 153 strikers was completed within 4 days of the date, April 13, specified by the Union, I find no undue delay, and I dismiss the complaint.

I presided at this 1-day trial on June 22, 1993, in Shreveport, Louisiana, pursuant to the June 22, 1993 third amended complaint (complaint) issued by the General Counsel of the National Labor Relations Board through the Regional Director of Region 15 of the Board. The complaint is based on a charge filed October 5, 1992, and subsequently amended, by International Union, United Automobile, Aerospace and Agricultural Implement Workers of American and its Local

2297 (UAW), AFL–CIO (the Union or UAW) against Beaird Industries, Inc. (BI, Beaird, the Company, or Respondent).[1]

In the Government's complaint the General Counsel alleges that Respondent BI violated Section 8(a)(3) and (1) of the Act, 29 U.S.C. § 158(a)(3) and (1), by delaying the reinstatement of some 158 named unfair labor practice strikers from April 13, 1992, to later dates, with most dates being April 14, 15, and 16, 1992. (Technically, therefore, the issue is whether there was an improper delay in the reinstatement. The real issue is money—the date when backpay, if any, begins to accrue for the 153 strikers.)

By its answer BI admits certain facts but denies violating the Act.

Originally this case was one of seven consolidated for trial. On June 18, 1993, the Regional Director for Region 15, based on a settlement which he approved, issued his order severing the first five cases: Cases 15–CA–11869–1, 15–CA–11869–5, 15–CA–11887–1, and 15–CA–11887–4. (GCX 1qq.)[2] Trial already had been scheduled to commence in Shreveport on June 21, 1993. (GCX 1jj.) When everyone assembled on June 21 for the trial, the parties began, or continued, further settlement discussion.

Proving successful, this discussion led to settlement of two of the remaining three cases, and the two, Cases 15–CA–11904 and 15–CA–11932, were severed from the instant case by the Regional Director's June 22, 1993 order severing cases and conditionally approving withdrawal of charges and third amended complaint and notice of hearing (GCX 6)—the trial complaint. Thus, the trial complaint covers only Case 15–CA–11923 (1:42–43).

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel (who attached a proposed order and notice to the Government's brief), the UAW, and the Company, I make the following

FINDINGS OF FACT

I. JURISDICTION

A Delaware corporation headquartered in Shreveport, Louisiana, Respondent BI fabricates steel. During the 12 months ending September 30, 1992, BI sold and shipped products valued at $50,000 or more direct to points outside the State of Louisiana. BI admits, and I find, that it is an employer within the meaning of 29 U.S.C. § 152(2), (6), and (7).

II. LABOR ORGANIZATION INVOLVED

The pleadings establish that the Union is a labor organization within the meaning of 29 U.S.C. § 152(5).

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

1. Prior cases

This case is the sequel to *Beaird Industries*, 311 NLRB 768 (1993). There, as material here, the Board found that a strike which began September 11, 1991, was an unfair labor practice strike. The Board ordered BI to offer the strikers, on their unconditional application, immediate and full reinstatement and to make them whole, with interest. Actually, the Board adopted, as modified, the July 14, 1992 decision of Administrative Law Judge J. Pargen Robertson.

After settlement and severance of the other six case numbers from this case, we are left here with the issue of whether BI unlawfully delayed reinstating the strikers after the strike ended in April 1992. The previous case, the one presided over by Judge Robertson, arose in the context of an organizing campaign which concluded with the Union's election victory and Board certification followed by bargaining from May 1990 to May 1991, withdrawal of recognition on May 16, 1990, and the strike which began September 11, 1991. The parties stipulated that the election won by the Union was conducted February 2, 1990, in Case 15–RC–7491 (1:18).

As found by Judge Robertson, *Beaird Industries*, supra at 796, and as alleged and admitted in the earlier pleadings in the cases consolidated for trial before me, the Union was certified on March 30, 1990. Because the unit description is lengthy, and is not otherwise relevant in this case, I merely note that it basically is a unit of production and maintenance employees. There is one observation to make concerning the Union's status. The earlier pleadings allege that the Union has been the exclusive bargaining representative since its certification date of March 30, 1990. The correct date is that of the Union's election victory, February 2, 1990. The certification date is when the employer's limited duty to bargain following a union's election victory ripens into the employer's plenary statutory obligation to recognize and bargain. At certification of a union the employer's duty to bargain relates back to the election date. *Livingston Pipe & Tube v. NLRB*, 987 F.2d 422, 428 (7th Cir. 1993); *Dow Chemical Co. v. NLRB*, 660 F.2d 637, 643 (5th Cir. 1981); *Lovejoy Industries*, 309 NLRB 1085, 1112 (1992).

Judge Robertson notes that BI was purchased by Trinity Industries in April 1990. *Beaird Industries*, supra at 796. Earlier cases involve BI when it had a somewhat different name or different owner. I do not rely on those cases in my findings here, but I mention them merely to complete the background picture. The first case was tried before Judge David L. Evans. *Riley-Beaird*, 253 NLRB 660 (1980). It was followed by the first case before me, *Riley-Beaird*, 259 NLRB 1339 (1982) (with different owners mentioned at 1341 fn. 5). The third was before Judge Richard H. Beddow Jr., reported as *Riley-Beaird*, 271 NLRB 155 (1984). The fourth was the one tried before Judge Robertson, and the instant one is the fifth to be litigated. As these cases note, organizing in the past was, at times, by a union other than the UAW.

2. The strike ends

As noted, the strike ended on April 6, 1992. The details are important, and I summarize them in a moment. A list (RX 1) with names and addresses of the approximately 200 strikers is in evidence (1:61). Apparently for various reasons, not all the 200 returned to work. The focus here is on 153 of the strikers. The 153 are named on another list (GCX 2) stipulated and received in evidence (1:7–15, 97–107) as the list of returned strikers, with date of return, in issue here.

[1] Unless otherwise indicated, all dates are for 1992.

[2] References to the one-volume transcript of testimony are by volume and page. Exhibits are designated GCX for the General Counsel's, CPX for the Union's, and RX for Respondent BI's.

Larry A. Bell, BI's manager of human resources (1:126), testified that when the strike ended the bargaining unit consisted of about 450 employees. Some 185 to 190 of the strikers were reinstated. During the strike BI operated with temporary replacements and nonstrikers. Because BI did not release the temporary replacements, but simply absorbed the returning strikers into the work force, the size of the bargaining unit expanded to over 600 employees (1:197, 201–202).

B. *Governing Law*

1. The Board's order

In the predecessor case before Judge Robertson, the Board ordered BI to offer reinstatement to the unfair labor practice strikers on their unconditional application, and further ordered that BI make strikers whole ''who have made themselves available for employment on an unconditional basis but who were refused reinstatement, in the manner set forth in the Board's decision.'' *Beaird Industries*, supra at 772.

In its decision the Board wrote that BI must make the strikers whole for any loss of earnings they may have suffered as a result of BI's refusal, if any, to reinstate them in a timely fashion, by paying to each of them a sum of money equal to that which they would have earned as wages during the period (id. at 770–771):

> [C]ommencing 5 days after the date on which each unconditionally offered to return to work to the date of the Respondent's offer of reinstatement, less any net earnings during such period, with backpay and interest thereon to be computed in the manner prescribed in. . . . The Board has found that the 5-day period is a reasonable accommodation between the interests of the employees in returning to work as quickly as possible and the employer's need to effectuate that return in an orderly manner. [Citing *Drug Package Co*., 228 NLRB 108, 113 (1977), modified on other grounds 507 F.2d 1340 (8th Cir. 1978).] Accordingly, if the Respondent herein ignores or rejects, or has already rejected, any unconditional offer to return to work, unduly delays its response to such an offer, or attaches unlawful conditions to its offer of reinstatement, the 5-day period serves no useful purpose and backpay will commence as of the unconditional offer to return to work. *Newport News Shipbuilding*, 236 NLRB [1637] at 1638.

2. Other cases

In *Drug Package Co*., 228 NLRB 108, 113–114, the Board stated that an employer's backpay liability accrues from the day after the date on which each striker unconditionally offers to return to work until the date of the employer's offer of reinstatement. However, it is not necessary for strikers individually to make unconditional applications, nor even for employers to extend reinstatement offers to each striker individually, when their union acts as agent for both. *Harris-Teeter Super Markets*, 242 NLRB 132, 157 (1979), enfd. mem. 644 F.2d 39 (D.C. Cir. 1981). And where a union has made an unconditional offer on behalf of all strikers, the employer may not delay reinstatement by requiring strikers individually to affirm the request for reinstatement. *Champ Corp*., 291 NLRB 803, 885 (1988), enfd. 933 F.2d 688 (1991).

When the offer to return is on behalf of unfair labor practice strikers, the employer is not at liberty to retain replacements, but must, if necessary to make room for the strikers, release the replacements. *Mastro Plastics Corp. v. NLRB*, 350 U.S. 270, 272–273 (1956); *Orit Corp*., 294 NLRB 695, 698 (1989); *Harris-Teeter Super Markets*, supra at 157.

When the offer to return to work is collective, that is, on behalf of the group of unfair labor practice strikers, the employer is without authority to reinstate strikers on a piecemeal basis, but must offer unfair labor practice strikers reinstatement as a group. *Orit Corp*., supra. An employer responding to a collective offer to return to work makes a lawful offer of reinstatement *by accepting* that offer and recalling the unfair labor practice strikers as a group, ''no matter what adjustments this entail[s] with respect to the temporary work force which ha[s] been hired in their places.'' *Orit Corp*., supra at 699.

Finally, should an employer consider an offer to return to work ambiguous, it is obligated to ask for clarification. *Stephenson-Yost Steel*, 294 NLRB 395, 405 (1989); *Champ Corp*., 291 NLRB 803, 885 (1988), enfd. 933 F.2d 688 (1991).

C. *Witnesses and Credibility*

Three witnesses testified, one twice. The General Counsel called James D. Baker, John Donaho, and rested (1:92). The Union then rested without calling any witnesses (1:92). BI called Baker, then Larry A. Bell, and rested (1:204). There was no rebuttal stage.

An international representative with the UAW, Baker was the Union's organizer during the UAW's successful organizing campaign at BI. As the Union's service representative for the bargaining unit at BI, Baker attended the unfair labor practice trial in the case presided over by Judge Robertson. John Donaho, chairman of the Union's bargaining committee, is a machine welder and 26-year employee of BI. At the trial before Judge Robertson, Donaho sat at the counsel table with the Government's lawyers (1:79–80, 85).

Manager of Human Resources Larry A. Bell assisted on behalf of BI at the trial before Judge Robertson and at the instant trial. Bell apparently has worked at BI for no more than a few years, for he testified that he was not there when layoffs occurred in the 1980s (1:185).

Having closely observed the witnesses, I credit James Baker and John Donaho. Although at times Larry Bell appeared candid and sincere in acknowledging certain facts, I credit Baker and Donaho over Bell where conflict exists.

D. *The Evidence*

1. Introduction

Complaint paragraph 9 alleges that about April 6, 1992, various strikers, including those named in an appendix A to the complaint, by letter made an unconditional offer to return to their former positions of employment. BI denies.

Complaint paragraph 10 alleges that since about April 13 BI has ''failed and refused'' to reinstate the named strikers ''until the date'' shown by each name on appendix A. BI denies. (I interpret par. 10 to allege a delayed return.) Paragraph 11, also denied by BI, alleges unlawful motivation.

Paragraph 12 alleges that BI, by delaying the strikers' return, violated Section 8(a)(3) of the Act. BI denies.

As mentioned earlier, the parties stipulated (1:7–15, 97–107) to a list (GCX 2) of the 153 strikers in issue here. The parties also stipulated that, for our purposes here (GCX 2), the trial exhibit, is the same document as appendix A attached to the complaint (1:110). All further references here shall be to General Counsel's Exhibit 2 (GCX 2).

The controlling event occurred in a conference held the morning of April 6, preceding trial resumption that day before Judge Robertson. In the trial before Judge Robertson, the General Counsel presented the Government's case during the 3 days of March 16–18, 1992. Following a break of a bit over 2 weeks, trial resumed with BI presenting its case over the 3 days of April 6 (a Monday), 7, and 8 (1:183-184, Bell). *Beaird Industries*, 311 NLRB 768. As recorded by Judge Robertson, id., the General Counsel was represented in that case by Attorneys Jack L. Berger and Charles Rogers, with Henry T. Arrington and Jonathan S. Harback representing BI.

2. ''Clock will not start running until Monday, April 13th''

A few minutes before the hearing was to resume before Judge Robertson on Monday, April 6, 1992, Union Representative Baker handed to Larry Bell, BI's human relations manager, a letter unconditionally offering the return to work of all strikers (1:25, 80, 83, 126–127, 192). Addressed from Baker to W. E. Adams, BI's president and general manager, the text of the April 6 letter reads (GCX 3):

> On behalf of all bargaining unit employes and the UAW and its Local 2297, please consider this letter as an unconditional offer to return to work with immediate full reinstatement to their former jobs, and if their former jobs no longer exist, then to a substantially equivalent position.
>
> As you are aware, it is our position that the current strike is an Unfair Labor Practice strike and you are required to return all striking employees to work.
>
> Please contact me at my office (318) 688–4020, for assistance in coordinating their return to work.

Arrington, BI's attorney, told Judge Robertson that he would have to ask for a continuance in view of the letter. The attorneys, representatives (Baker, Donaho, and Bell), and Judge Robertson repaired to the judge's temporary chambers where a brief conference ensued. At the conference Arrington repeated his request for a continuance because the letter said ''immediate'' and that Larry Bell would be handling the reinstatement process for BI. Baker said that although the letter calls for immediate reinstatement, he would commit to BI that ''the clock will not start running until Monday, April 13th.'' Although Arrington still expressed concern because of Bell's having to assist at the trial, the judge apparently indicated that he might not grant a continuance, and the parties returned to the hearing room where the trial resumed without BI's moving on the record for a continuance (1:26–28, 30, 57, Baker; 1:81, Donaho).

According to Bell, after Arrington asked for a continuance, the judge either overruled the request, or indicated that he would, and Baker said the Union ''was aware of the situation and would work with'' BI on getting the employees back to work. Baker mentioned no time table and Bell recalls no statement by Baker about a clock (1:130–134, 166–168, 191). Baker and Donaho testified more positively and persuasively than did Bell. I credit their account and reject most of Bell's, although I note that Bell's account is consistent with their's respecting the continuance matter.

While I accept Bell's testimony that Baker said he would work with BI in returning the employees to work, I find that Baker's statement pertained to assistance (as the Union's letter of April 7, quoted below, states), not to an open-ended time frame. I credit the accounts of Baker and Donaho that Baker said ''the clock will not start running until Monday, April 13th.''

Moments later the trial resumed before Judge Robertson without, apparently, BI formally moving on the record for a continuance. On brief BI argues that the parties ''agreed'' that the 5-day period would not begin running until April 13, and that the Union consented to a 1-week ''extension'' of the 5-day period ''in lieu of a possible continuance of the unfair labor practice trial.'' (Br. at 6–7.) BI's argument touches on the pivotal event. Factually there was no ''agreement.'' Baker unilaterally stated his commitment in the discussion before Judge Robertson about Arrington's expressions of concern. Although the evidence is skimpy (in part because Arrington did not testify), Bell testified that Judge Robertson indicated he likely would not grant a continuance. The record here does not disclose the precise reason that Arrington did not, on the record, formally move that Judge Robertson grant a continuance notwithstanding the judge's indicated position. The implication, however, is that BI did not make the motion because it was satisfied that it could handle the reinstatement process within the 5 days beginning Monday, April 13. That is, the implication is that BI relied on its interpretation of the Union's commitment.

The second aspect of BI's argument on brief, the reference to an ''extension'' of the 5 days, introduces the key issue—without articulating it. At the April 6 meeting Baker said that the clock would not start running until Monday, April 13. But what clock was Baker talking about? Was it the 5-day clock, so that the Union really was committing to a doubling of the 5-day standard, as BI argues? Or was it the money clock, as the Government and the Union impliedly suggest here but never expressly state? Under the money clock interpretation, backpay would start to accrue on Monday, April 13. That is not a reasonable interpretation of Baker's statement, BI argues (Br. at 6–7), because it would offer nothing beyond what the Board's 5-day rule already afforded BI. Thus, 5 days from Monday, April 6, was Saturday, April 11. Although the plant was working three shifts (1:176), it does not operate on weekends (1:161). The first workday after the 5 days, therefore, would have been Monday, April 13. In their posthearing briefs, the General Counsel and the Union do not address this pivotal issue.

Bell acknowledges that he took no action that day on the Union's April 6 letter (unconditionally offering strikers back to work) because the hearing resumed immediately and that evening he and Arrington worked to prepare for trial the next day, Tuesday (1:134–135, 192).

3. All 153 strikers recalled by April 16, 1992

The morning of Tuesday, April 7, Baker handed Bell an April 7 letter (or copy of one; GCX 4) addressed to W. E. Adams, BI's president and general manager, along with a list (RX 1) of some 200 names and addresses (1:31–32, 34, 38–39, 60–61, 135–136, 192). The text of Baker's April 7 letter to Adams reads (GCX 4):

> The Union respectively request [respectfully requests] that you send a certified letter to the last known address of all strikers, recalling them to work.
>
> It is the union's position that everyone should be notified to return, however we understand that your records will reflect certain voluntary quits and certain terminations.
>
> Those instant cases will be addressed as necessary.
>
> We are currently notifying employees to report their notification or the lack of notification so we may assist them in this matter.
>
> Please address any questions to my attention.

No response or questions were addressed to the Union (1:67–68, 193–194). Baker concedes that he did not know which strikers would return and which ones would not (1:65).

Bell testified that he assisted at trial that day, and worked that evening with Arrington preparing for the next day's trial (1:135, 193). Although Bell has a staff of three persons reporting to him (Paula Johnson, Lanita Kent, and Julian Lawrence; 1:138–139, 163–164), he did not assign any tasks to them at that time because his mind was on the trial (1:164–165). Thus, nothing was done that day about the recall (1:193).

Early the morning of Wednesday, April 8, apparently before trial resumed that day, Bell gave the Union's list (RX 1) of strikers to Julian Lawrence, directing Lawrence to compare the addresses with BI's records, and to compile a list of any differences. Where addresses were the same, Bell wanted to use BI's records because computer generated address labels could be produced based on BI's records (1:136, 169, 190). Letters had to be hand-typed for the others (1:145).

After the hearing before Judge Robertson closed about noon that Wednesday, April 8, Bell, Arrington, and BI's team returned to the plant about 1:30 p.m. (1:137). When Bell and the others returned, the list of address differences was being typed, and Lawrence gave it to Bell that afternoon (1:136, 139, 145). The list has about 48 differences (RX 3). Paula Johnson was typing the envelopes that could not have computer-generated address labels (1:181).

At the plant that afternoon, Arrington dictated certain letters, including a one-paragraph letter (RX 2 at 4; RX 6; 1:146, 181–182, 198) sent to each striker from Bell reading:

> Beaird Industries has received an unconditional offer to return to work from the union on behalf of all strikers. If you desire to return to work, you should notify the personnel office. After receiving such notification, the personnel office will contact you concerning when you should report to work.

Bell testified that he sent the letters to the strikers by regular mail, not certified as requested in Baker's April 7 letter to Adams, because certified mail would have delayed the delivery (1:151–152, 194–195).

That same Wednesday afternoon, April 8, Baker met with the strikers and distributed an April 8 half-page memo (GCX 5) informing them of various developments (1:35, 65). The first half of Baker's memo, addressed to Local 2297 members, reads (GCX 5):

> Court is over and it looks good. The company will be sending you a letter in the next day or two asking you to let them know if you intend to return to work at Beaird.
>
> After you receive your letter I want you to contact Larry Bell at the plant and tell him your decision. The number is (318) 865–6351.
>
> I then want you to make a note of what he said. Write his answer on the letter they sent you and turn it in to my office, or one of the bargaining committee. I want to keep records to make sure everyone is treated the same.
>
> Everyone should be returned by early next week.

Baker testified that by ''early next week'' [last line quoted above] he meant Monday—not Monday, Tuesday, or Wednesday (1:65–66). On this point Baker did not testify persuasively. I find that Baker meant what he wrote, ''early next week,'' and that such covered at least Monday and Tuesday, April 13 and 14, 1992.

Bell testified that Attorney Arrington advised him concerning reinstatement of the strikers (1:160), and that during the afternoon of Wednesday, April 8, Arrington told him that BI had 5 days to return the strikers to work, and that BI needed to get all the strikers back to work the week of April 13. Bell understood Arrington to mean that BI had the entire week of Monday, April 13, through Friday, April 18, to return all the strikers to work, and that was the goal Bell worked to achieve (1:160, 162–163, 188, 190, 200–201).

Bell testified that the strikers began calling in about noon on Thursday, April 9 (1:152, 196). John Donaho testified that he spoke to Bell about 10 minutes to noon that April 9. He had received his copy (GCX 7) of Bell's April 8 letter (RX 2 at 4) instructing strikers desiring recall to call the personnel office. Donaho reminded Bell that ''the clock starts running Monday.'' Bell said he was aware of that. Donaho was recalled to work at 7 a.m. on April 16 (1:88–91).

Bell further testified that as calls were received from the strikers he, Lanita Kent, and Paula Johnson (members of his staff) recorded data on a log (RX 5) reflecting when the former striker had called in and when BI called him back and the date and shift given him for his return. Bell spent all the afternoon of April 8 devoted to these matters, most of Thursday, April 9, all of Friday, April 10, about 75 percent of Monday, April 13, about 50 percent of April 14, and about 25 percent on Wednesday, April 15. His staff spent a similar amount of time on recall of the strikers (1:152–158). Although Bell's staff has worked overtime in the past when necessary, they did not work overtime during this period (1:184).

On Friday morning, April 10, Bell Testified, Bell's office submitted to E. C. Green, manufacturing vice president, a list of the strikers who had called saying they wanted to return.

On Monday morning, April 13, Green's office called back advising the personnel office the date and shift that the recalled striker was to report. Bell's personnel staff then began recalling the strikers (1:153–154, 197). Bell testified that it would have been mass chaos if everyone would have been recalled for the same date, and that it would have paralyzed the plant if the 180 or so returning strikers had shown up at the same time. BI needed to schedule back those who were interested in returning, Bell testified (1:195–196).

All the strikers (in issue here), Bell testified, were back by the end of the week of April 13 (1:198). Actually, as the stipulated list (GCX 2) reflects, all 153 were returned during the 3 days of Tuesday–Thursday, April 14–16, 1992.

E. *Analysis and Conclusions*

I have credited the General Counsel's witnesses, Baker and Donaho, that at the April 6 conference before resumption of the hearing in Judge Robertson's case, Baker told Judge Robertson and Attorney Arrington that the ''clock will not start running until Monday, April 13th.'' Arrington did not testify before me, but I credit Bell that Arrington told him (relevant to the reason for the course of action by Bell and BI) the afternoon of Wednesday, April 8, that BI had 5 days to return the strikers to work, and that BI needed to get them back to work the week of (Monday) April 13. I credit Bell that he understood Arrington to mean that BI had through Friday, April 18, to return all the strikers.

Union Representative Baker never testified that, by his commitment to Arrington, he meant that the money clock would start on Monday, April 13. It is unclear whether Baker, when voicing his commitment to Arrington, made any mental distinction between a 5-day timeclock and a date when backpay would begin to accrue. There is no evidence that Baker intended that backpay would begin to accrue on Monday, April 13. Indeed, Baker's April 8 memo (GCX 5) to the Union's members, that everyone should be returned by ''early next week,'' suggests that backpay would not begin to accrue until sometime after ''early next week.'' That is, Baker's memo is consistent with BI's interpretation of the commitment Baker extended Attorney Arrington on April 6.

Although Arrington did not testify, BI's understanding of Baker's commitment is reflected by its course of conduct and by Arrington's instructions of April 8 to Bell. It is clear, and I find, that BI understood Baker's commitment to mean that the start of the Board's 5-day clock (during which no backpay accrues) would be postponed to Monday, April 13. As Baker testified, the reason he made that commitment is that he knew BI could not process the reinstatement while its principals were participating in a trial which was scheduled to last all week (1:57). Although Baker never explains his ''commitment,'' the General Counsel and the Union take the position that Baker's ''commitment'' impliedly means nothing, that all strikers should have been reinstated by April 13 and, since they were not, backpay begins on April 6. The different interpretations here call to mind Chisholm's Third Law: ''Proposals, as understood by the proposer, will be judged otherwise by others.'' A. Bloch, *Murphy's Law* 13 (1977, 1983).

BI's interpretation of Baker's commitment is reasonable. First, as I have already noted, the alternative interpretation (that the money clock begins on April 13) would offer BI no more time than what BI already enjoyed under Board law. Second, the reason Union Representative Baker made his commitment was Arrington's expression of a need for a continuance because BI needed to act in view of the Union's April 6 demand for ''immediate'' reinstatement of the strikers. Thus, the whole context was about giving BI more time than what Board law afforded. It is apparent that BI, by not formally moving on the record for a continuance in that case, acted in reliance on its understanding of the Union's commitment.

The Union committed that ''the clock will not start running until Monday, April 13th.'' BI interpreted that commitment to mean that the start of the Board's 5-day clock would be postponed to Monday, April 13, during which no backpay would accrue. BI's interpretation was reasonable. Acting with reasonable dispatch under that interpretation, BI returned all 153 strikers (in issue here) to work within 4 days of the date, April 13, specified by the Union. I therefore find that BI did not unduly delay the return of the strikers. Accordingly, I shall dismiss the complaint.

CONCLUSION OF LAW

Respondent Beaird Industries, Inc. has not, as alleged, violated 29 U.S.C. § 158(a)(3) and (1) by delaying the reinstatement of 153 unfair labor practice strikers beyond April 13 to April 14, 15, and 16, 1992.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[3]

ORDER

The complaint is dismissed.

[3] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.